D.B.CIVIL SPECIAL APPEAL (W) NO. 1150/2006
Jaipur Development Authority, Jaipur
Vs.
JDA Appellate Tribunal and Anr.

Date of order : 30.05.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri Mahendra Goyal, for the appellant.
Shri R.K. Sharma, for respondent no.2.

The dispute in this appeal relates to allotment of a plot of land for residential purposes. Respondent no.2, Lalit Kumar Gupta, applied for and was allotted a plot under Kanota residential scheme. However, as the number of applicants for allotment of land under the said scheme was found to be insufficient, decision was taken by the Jaipur Development Authority (JDA) to cancel the scheme itself and instead allot lands to the applicants under another scheme, namely, Sumel residential scheme. On 6.11.1998, accordingly, option was given to the applicants including the respondent to apply under the Sumel scheme. On 31.3.2000 allotment order was also issued.

Case of the JDA is that the lands covered by Kanota and Sumel schemes are situated in different areas and therefore, different prices were fixed for those lands and shown in the brochure itself. Whereas the price of land under the Kanota scheme was Rs. 400/- per sq.mtr., for Sumel scheme the price was fixed at Rs. 550/- per sq. mtr., and accordingly the respondent was asked to pay the difference of price as applicable to Sumel scheme in terms of the allotment order. The case of the respondent is that he is entitled to allotment on the terms and conditions as applicable to Kanota scheme i.e.at the rate of Rs. 400/- per sq. mtr.

It is not in dispute that the prices of lands covered by the two schemes

were different and accordingly differently fixed in the brochure itself. It was submitted on behalf of the respondent that copy of the brochure was not supplied to him and he was not aware of the terms and conditions including the reserve price fixed for the Sumel scheme. The submission has to be summarily rejected. It is a matter of common knowledge that whenever housing schemes are floated the terms and conditions are mentioned in the brochure and the applicants are supposed to be aware of those terms and conditions as mentioned therein. In fact, submission of application and allotment etc. are subject to terms and conditions incorporated in the brochure. The respondent therefore, can not be permitted to plead ignorance of the terms and conditions including the price. Option to take plot in the Sumel scheme was an offer to the respondent, and it was for him the accept the same or not. Being an applicant under the Kanota scheme, the scheme having been cancelled, in the ordinary course the JDA would have been justified in refunding the amount with interest as was stated in the letter dated 6.11.1998. The respondent cannot claim an absolute or indefeasible right for allotment when the scheme itself was cancelled and cancellation is not under challenge. Only option available to the respondent was either to withdraw the money deposited by him for allotment under the Kanota scheme or take allotment of land in Sumel scheme on terms and conditions as applicable to that scheme. If the respondent is interested in allotment of plot in Sumel scheme he has no option but to pay the difference of price and the direction of the JDA Appellate Tribunal to the contrary cannot be said to be in accordance with law. The impugned decision of the Tribunal is therefore liable to be set aside and so also the order of the learned Single Judge dismissing the writ petition of the appellant.

In the result, the order of the Tribunal dated 29.6.2001 is set aside, and the writ petition as well as this appeal are accordingly allowed .

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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